

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

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In re: KELLIE K. O'BRIEN,

Debtor.

BKY. No.: 04-34368  
Chapter 7

**NOTICE OF HEARING AND  
MOTION FOR RELIEF  
FROM AUTOMATIC STAY**

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TO: KELLIE K. O'BRIEN AND HER ATTORNEY, ROBERT J.  
HOLGUND, ATTORNEY AT LAW, P.O. BOX 130938, ROSEVILLE,  
MN 55113.

1. Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home Mortgage, Inc., by its undersigned attorneys, Reiter & Schiller, will make a motion for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on September 1, 2004 at 9:30 A.M. in Courtroom No. 228A, at the United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota, or as soon as counsel may be heard before The Honorable Dennis D. O'Brien, United States Bankruptcy Court Judge.

3. Any response to this motion must be filed and delivered not later than August 27, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than August 23, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

## **MOTION TO LIFT AUTOMATIC STAY**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on July 28, 2004. The case is now pending in this court.

5. This proceeding arises under 11 U.S.C. §362(d)(1), and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013-1 through 9013-3. Movant requests relief from the automatic stay of 11 U.S.C. §362 with respect to real property as described in Exhibit A hereto of the Debtor that is subject to a perfected security interest in favor of the Movant as shown by the term of the mortgage, a copy of which is attached hereto as Exhibit A.

6. That pursuant to the provisions of 11 U.S.C. §362(d)(1)(a), the Movant alleges "cause" for relief from the stay and is entitled to relief from the automatic stay inasmuch as:

a) That the payments due under said mortgage are in default from December 1, 2003 to date in the amount of \$927.85 per month, plus accrued late charges and inspection fees.

b) That as of the date of filing herein, the amount due under said mortgage loan was approximately \$90,000.00. The property is encumbered by junior liens in the amount of approximately \$19,000.00. According to the Ramsey County Tax Department the fair market value of the property is estimated at \$175,500.00. Debtor has one-third interest in said real property.

7. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 U.S.C. §362(a) to allow the Movant to pursue its remedies under state

law.

WHEREFORE, Movant, Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home Mortgage, Inc., by its undersigned attorneys, moves the Court for an Order pursuant to 11 U.S.C. §362(d), granting relief from the automatic stay with respect to the real property securing the Movant's claims to permit the Movant to pursue its rights under its mortgage and applicable state law, or in the alternative for such other relief as may be just and equitable.

REITER & SCHILLER

Dated: August 9, 2004

By: /s/Thomas J. Reiter  
Thomas J. Reiter  
Rebecca F. Schiller  
Attorneys for Movant  
The St. Paul Building  
6 W. Fifth Street  
Seventh Floor  
St. Paul, MN 55102-1420  
(651) 297-6400  
Attorney Reg. 152262/231605  
(D1667)

**THIS IS A COMMUNICATION FROM A DEBT COLLECTOR.**

# VERIFICATION

I, Karan Abernethy, Bankruptcy Supervisor with Wells Fargo Bank, N. A., declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: August 9, 2004.

WELLS FARGO BANK, N.A.

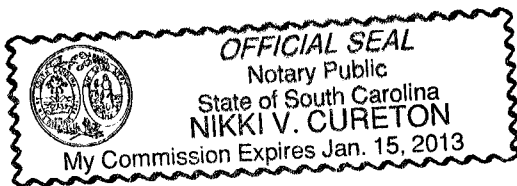
By: Karan Abernethy  
Karan Abernethy

Its: Bankruptcy Supervisor

Subscribed to and sworn before me this

9th day of August, 2004.

Nikki V. Cureton  
Notary Public



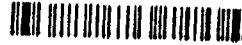
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DUC# 3504892

Certified Recorded On  
JUNE 03, 2002 AT 02:00PM

Signed: DJ  
OFFICE CO. RECORDER  
RAMSEY COUNTY MN

Fee Amount: \$20.00



0105279690

[Space Above This Line For Recording Data]

RETURN DOCUMENTS TO:  
ATI Title Company  
2550 University Avenue West  
St. Paul, MN 55114

## MORTGAGE

Return To:  
WELLS FARGO HOME MORTGAGE, INC.  
3601 MINNESOTA DR. SUITE 200  
BLOOMINGTON, MN 55435

### DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated FEBRUARY 26, 2002 together with all Riders to this document.

(B) "Borrower" is KELLIE K. OBRIEN, A SINGLE PERSON AND GEORGIA G. MILLER,  
and Paul Miller, Wife and Husband and Jeannette Gianoulis,  
a single person

Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is WELLS FARGO HOME MORTGAGE, INC.

Lender is a CORPORATION  
organized and existing under the laws of THE STATE OF CALIFORNIA  
Lender's address is P.O. BOX 5137, DES MOINES, IA 503065137

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated FEBRUARY 26, 2002

The Note states that Borrower owes Lender EIGHTY FIVE THOUSAND SIX HUNDRED AND 00/100  
Dollars

(U.S. \$\*\*\*\*\*85,600.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than MARCH 01, 2017

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

(A)

(L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

#### TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns, with power of sale, the following described property located in the COUNTY [Type of Recording Jurisdiction]

of RAMSEY [Name of Recording Jurisdiction]:  
LOT EIGHT (8), BLOCK EIGHTEEN (18), JAMES 4TH ADDITION

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

\_\_\_\_\_  
Kellie K. O'Brien (Seal)  
KELLIE K. OBRIEN -Borrower

\_\_\_\_\_  
Georgia G. Miller (Seal)  
GEORGIA G. MILLER -Borrower

\_\_\_\_\_  
Paul A. Miller (Seal)  
Paul Miller -Borrower

\_\_\_\_\_  
AIFD Jeannette Gianoulis (Seal)  
Jeannette Gianoulis -Borrower

\_\_\_\_\_  
-Borrower (Seal) -Borrower (Seal)

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

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In re: KELLIE K. O'BRIEN,

Debtor.

BKY. No.: 04-34368  
Chapter 7

**AFFIDAVIT OF MOVANT'S  
BANKRUPTCY SUPERVISOR**

-----  
STATE OF SOUTH CAROLINA )

COUNTY OF YORK)

Karan Abernethy, being duly sworn on oath states:

1. That I am a Bankruptcy Supervisor in the Bankruptcy Department for Wells Fargo Bank, N.A. in the Fort Mill, South Carolina servicing center. In my capacity as a Bankruptcy Supervisor, I have had the opportunity to review the mortgage account of the Debtor.

2. That the payments due under said mortgage are in default from December 1, 2003 to date in the amount of \$927.85 per month, plus accrued late charges and inspection fees.

3. That as of the date of filing herein, the amount due under said mortgage loan was approximately \$90,000.00. The property is encumbered by junior liens in the amount of approximately \$19,000.00. According to the Ramsey County Tax Department the fair market value of the property is estimated at \$175,500.00. Debtor has one-third interest in said real property.

Further your affiant sayeth naught except that this Affidavit is made in support of the Movant's motion to lift the automatic stay for cause.

WELLS FARGO BANK, N.A.

Dated: August 9, 2004

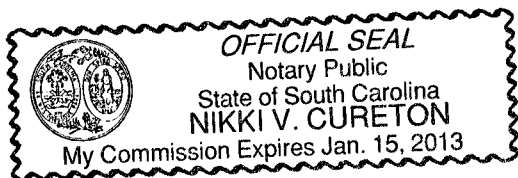
By: Karan Abernethy  
Karan Abernethy  
Bankruptcy Supervisor  
3476 Stateview Blvd.  
Fort Mill, SC 29715

Subscribed to and sworn before me this

9<sup>th</sup> day of August, 2004.

Nikki V. Cureton

Notary





UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

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In re: KELLIE K. O'BRIEN,

Debtor.

BKY. No.: 04-34368  
Chapter 7

**MEMORANDUM IN SUPPORT  
OF MOTION FOR RELIEF  
FROM THE AUTOMATIC STAY**

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**MEMORANDUM OF LAW**

I. Factual Background

The Debtor filed her petition herein on July 28, 2004 under Chapter 7 of the Federal Bankruptcy Code and listed real property located in Ramsey County, Minnesota that is subject to a security interest held by Movant. Said real property is legally described as follows:

Lot Eight (8), Block Eighteen (18), James 4<sup>th</sup> Addition.

The amount due under the Movant's mortgage as of the date of filing herein is approximately \$90,000.00. The property is encumbered by junior liens in the amount of approximately \$19,000.00. According to the Ramsey County Tax Department the fair market value of the property is estimated at \$175,500.00. Debtor has one-third interest in said real property. The payments due under said mortgage are in default from December 1, 2003 to date in the amount of \$927.85 per month, plus accrued late charges and inspection fees.

## II. Argument

### GOOD CAUSE EXISTS TO GRANT THE MOVANT RELIEF FROM THE STAY FOR CAUSE.

Section 362(d) (1) of the Bankruptcy Code, 11 U.S. C. §362 (d)(1), specifies the following conditions that must be met in order for a party in interest to be entitled to relief from the automatic stay provisions of that section:

On request of a party in interest and after notice and hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay; for cause, including the lack of adequate protection of an interest in property of such party in interest; or . . .

The Debtor has not offered any form of adequate protection to the Movant as the loan debt increases. The combined encumbrances on the Debtor's one third interest in the property total approximately \$109,000.00 and the fair market value of the property is estimated at \$175,500.00.

In view of the Debtor's inability to make payments toward her loan obligation, the Movant's interest in the real property of the Debtor is not adequately protected. A continuing default by the Debtor will impair the Movant's interest without adequate protection or just compensation. The only protection of the Movant's interest proffered by the Debtor is for the Movant to retain its lien awaiting future mortgage payments to be made by the Debtor. The Debtor's offer of future payments will not provide adequate protection of the Movant's interest and therefore cause exists to terminate the automatic stay.

### CONCLUSION

For the reasons stated above, the Movant's motion to terminate the automatic stay should be granted.

REITER & SCHILLER

Dated: August 9, 2004

By: /e/ Thomas J. Reiter  
Thomas J. Reiter  
Rebecca F. Schiller  
Attorneys for Movant  
The Saint Paul Building  
6 W. Fifth Street  
Seventh Floor  
St. Paul, MN 55102-1420  
(651) 297-6400  
Attorney Reg. 152262/231605  
(D1667)

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

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In re: KELLIE K. O'BRIEN,

BKY. No.: 04-34368

Chapter 7

Debtor.

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**UNSWORN DECLARATION FOR PROOF OF SERVICE**

Thomas J. Reiter, an attorney licensed to practice law in this Court, with an office address of The St. Paul Building, 6 West 5th St., St. Paul, Minnesota 55102 declares that on August 11, 2004 he served the annexed Notice of Hearing and Motion, Memorandum, Affidavit and Proposed Order upon each of the individuals named below, to each of them a true and correct copy thereof, enclosed in an envelope, and mailed by First Class Mail with postage prepaid and depositing same in the post office at St. Paul, Minnesota.

John A. Hedback  
Trustee  
2855 Anthony Ln. S., Ste. 201  
St. Anthony, MN 55418

United States Trustee  
1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

Kellie K. O'Brien  
2558 Fairview Ave. N.  
Roseville, MN 55113

Robert J. Hoglund  
Attorney at Law  
P.O. Box 130938  
Roseville, MN 55113

Georgia Miller  
Paul Miller  
7213 Gloucester  
Edina, MN 55424

Jeanette Giamoulis  
2558 Fairview Ave. N.  
Roseville, MN 55113

Xcel Energy  
P.O. Box 9477  
Minneapolis, MN 55484-9477

McGrath Dev.  
c/o Lommen, Nelson, et al  
1800 IDS Center  
80 South 8<sup>th</sup> St.  
Minneapolis, MN 55402

And I declare, under penalty of perjury, that the foregoing is true and correct.

REITER & SCHILLER

Dated: August 11, 2004

By: /e/Thomas J. Reiter

Thomas J. Reiter

Attorney at Law

6 W. Fifth Street

Seventh Floor

St. Paul, MN 55102-1420

(651) 297-6400

Attorney Reg. 152262

(D1667)

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

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In re: KELLIE K. O'BRIEN,

BKY. No.: 04-34368  
Chapter 7

Debtor.

**ORDER TERMINATING STAY**  
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This matter came on before the undersigned Judge of the above entitled Court, upon motion filed with the Court on September 1, 2004 in Courtroom No. 228A, at the United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota. The movant, Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home Mortgage, Inc., was represented at the hearing by Reiter & Schiller. Other appearances, if any, are noted on the record.

Based upon all the files and proceedings herein, and the Court having considered the arguments of counsel,

IT IS HEREBY ORDERED THAT:

1. The automatic stay imposed by 11 U.S.C. §362 is hereby terminated as to the real property over which the Movant, its successors or assigns, has an interest, said property legally described as:

Lot Eight (8), Block Eighteen (18), James 4<sup>th</sup> Addition,  
Ramsey County, Minnesota.

2. Notwithstanding Fed. R. Bankr. P. 4001 (a) (3), this order is effective immediately.

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Dennis D. O'Brien  
Judge of the U.S. Bankruptcy Court